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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964.

No. 387

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), AFL-CIO,
Petitioner,

vs.

HOOSIER CARDINAL CORPORATION,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR THE RESPONDENT IN OPPOSITION.

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To The Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

OPINION BELOW.

The opinion and judgment of the Court of Appeals for the Seventh Circuit is reported in 59 LRRM 2448 and appears in Appendix A, pp. 17 to 22 attached to the petition for a writ of certiorari filed herein.

JURISDICTION.

The opinion and judgment of the Court of Appeals, affirming the District Court's dismissal of petitioner's suit, was entered on June 4, 1965. No petition for rehearing was filed. The jurisdiction of this Court is invoked under Section 1254(1) of the Judicial Code.

STATUTES INVOLVED.

The petitioner has adequately set forth the federal statutes involved herein. It has, however, omitted certain pertinent and applicable Indiana statutes relied upon by the petitioner in the District Court, some of which were specifically pleaded and relied upon in Paragraph 10 of complaint filed in this action and involved the Indiana statutes for penalties, liquidated damages and attorneys' fees.

The Indiana statutes involved herein are as follows: Sections 40-102; 40-104; 40-105 of Burns' Indiana Statutes Annotated, 1933, 1952 Replacement Volume (Act of the General Assembly for the State of Indiana for the year 1911, Chapter 68, Sections 1 and 4 and Act of said General Assembly for the year 1933, Chapter 47, Section 2) provide:

> 40-102. Semimonthly payment—Penalty and damages.—Every such person, firm, corporation or association who shall fail to make payment of wages to any such employee, as provided in section one [§ 40-101] of this act, shall, as liquidated damages for such failure, pay to such employee for each day that the amount due to him remains unpaid ten [10] per cent of the amount due to him in addition thereto, not exceeding double the amount of wages due, and said damages may be recovered in any court having jurisdiction of a suit to recover the amount due to such employee, and in any suit so brought to recover said wages, or the liquidated damages for nonpayment thereof, or both, the court shall tax and assess as costs in said case a

reasonable fee for the plaintiff's attorney or attorneys. [Acts 1933, ch. 47, § 2, p. 371.]

40-104. Weekly payment.—Every corporation, association, company, firm or person engaged in this state in mining coal, ore or other mineral, or quarrying stone, or in manufacturing iron, steel, lumber, staves, heading, barrels, brick, tile, machinery, agricultural or mechanical implements, or any article of merchandise, shall pay each employee of such corporation, company, association, firm or person, if demanded, at least once every week, the amount due such employee for labor, and such payments shall be in lawful money of the United States, and any contract to the contrary shall be void. [Acts 1911, ch. 68, § 1, p. 110.]

40-105. Weekly payment—Penalty and damages.—Every corporation, company, association, firm or person who shall fail for ten [10] days after demand of payment has been made to pay employees for their labor, in conformity with the provisions of this act [§§ 40-104—40-109], shall be liable to such employee for the full value of his labor, to which shall be added a penalty of one dollar [$1.00] for each succeeding day, not exceeding double the amount of wages due, and a reasonable attorney's fee, to be recovered in a civil action and collectable without relief. [Acts 1911, ch. 68, § 4, p. 110.]

Sections 2-601; 2-602 of Burns' Indiana Statutes, Annotated, 1933, 1965 Pocket Supplement to 1946 Replacement Volume (Act of the General Assembly for the State of Indiana for the year 1881 (Spec. Sess.), Chapter 38, S. 37, p. 240; 1951, Ch. 301, S. 1, p. 999 and Act of said General Assembly for the year 1881 (Spec. Sess.), Chapter 38, S. 38, p. 240; 1951, Ch. 301, S. 2, p. 999) provide:

2-601. *Limitation of actions—Six-year Statute.*—The following actions shall be commenced within six (6) years after the cause of action has occurred, and not afterwards.

First. On accounts and contracts not in writing. . . . (Acts 1881 (Spec. Sess.) Ch. 38, S. 37, p. 240; 1951; Ch. 301, S. 1, p. 999)

2-602. *Limitation of actions—Two, five, six, ten and twenty years.*—The following actions shall be commenced within the periods herein.

First. For injuries to person or character, for injuries to personal property, and for a forfeiture of penalty given by statute, within two (2) years. . . .

Sixth.[1] Upon contracts in writing other than those for the payment of money within twenty (20) years. . . . (Acts 1881 (Spec. Sess.), Ch. 38, S. 38, p. 240; 1951, Ch. 301, S. 2, p. 999)

QUESTIONS PRESENTED.

1. The primary question is whether the District Court and the Court of Appeals correctly held that the Indiana statutes of limitations and the interpretation given to them by the Indiana courts applies to this action and, in following such statutes, correctly dismissed petitioner's cause of action herein.

2. The secondary questions are (a) whether a state statute of limitations applies in an action brought under Section 301 of the Labor Management Relations Act where the latter act does not contain a statute of limitations; (b) whether under Indiana law a claim for wages by an employee whose employment contract is oral, although supplemented by a union contract, is an action on an oral contract so as to be barred by the Indiana six year statute of limitations; and (c) where in an action by a union to recover individual employee's claims for vacation pay, brought

1. Although the Respondent does not consider that this statute is applicable, the petitioner refers to it at page 5 of its Appellant's Brief before the Circuit Court below and took the position that if any Indiana statute of limitations were to apply, it should be the 20 year statute referred to above. See Appellant's Brief and Appendix pages 5, 8, 16-20 for this argument.

under Section 301 of the Labor Management Relations Act, there is joined with it a claim for penalties, statutory damages and attorney fees provided solely by the Indiana statute, such action is in effect an Indiana action and is governed solely by the statutes of limitations of that state.

STATEMENT.

On April 8, 1964 the petitioner herein filed an action in the United States District Court for the Southern District of Indiana for the recovery of vacation pay allegedly due the former employees of respondent. Rhetorical paragraph 10 of said complaint states as follows: "That pursuant to the Acts of the General Assembly for the State of Indiana for the year 1911, Chapter 68, Sections 1 and 4 thereof and in accordance with the Acts of the General Assembly for the year 1933, Chapter 47, Section 2, there is due to the employees represented by the plaintiff an amount equal to double unpaid wages which amount is in excess of Eighty Thousand Dollars ($80,000.00)." (Appellant's Brief and appendix, p. 5a.) Petitioner's prayer for relief is as follows: "Wherefore, the plaintiff asks judgment against the defendant corporation in the amount of Forty Thousand Dollars ($40,000.00) together with liquidated damages in the amount of Eighty Thousand Dollars ($80,000.00) together with a reasonable fee for plaintiff's attorney together with its costs and prays that the plaintiff may have such further relief as to the Court seems just."

As shown by petitioner's complaint certain employees of respondent were terminated on or about June 1, 1957 because of the fact that respondent discontinued their employment. As to the action herein filed by the petitioner in April of 1964, the respondent raised the issues of statute of limitations, lack of jurisdiction and standing to sue on the part of petitioner by a motion to dismiss filed on

May 4, 1964 with the District Court. Attached to said motion as Exhibit A is an affidavit of T. J. Morton, president of respondent, which states in part as follows: "That all of the former employees of the defendant whose names appear on Exhibit B attached to plaintiff's complaint . . . were . . . continuously employed by the said defendant under verbal or oral contracts of employment and that none of said former employees at any time prior to their discharge by the defendant herein on or about June 1, 1957 were ever employed under any written employment contract with defendant." Respondent's motion to dismiss, supported by affidavit, was in effect a motion for summary judgment. Petitioner, however, has never at any time filed any affidavits contradicting the above statement and no other matter appearing in the record is to the contrary.

The individual contracts of employment upon which petitioner sought to recover vacation pay and the aforesaid damages consisted of verbal employment contracts as supplemented by the written union contract. The Circuit Court, applying the law of Indiana, states that for the purpose of the Indiana statute of limitations such a contract was an oral contract and not a contract in writing. (Pet. App. 19-21.)

On November 12, 1964, the District Court filed an opinion, reported in 235 F. Supp. 183, upholding the respondent's contention that "the complaint shows on its face that the causes of action upon which recovery is sought on behalf of the individual former employees of the defendant were barred by the statute of limitations of the State of Indiana. . . . at the time this action was commenced . . ." The opinion issued by the Court of Appeals for the Seventh Circuit on appeal by the petitioner on June 4, 1965 affirmed the opinion of the District Court. The Circuit Court found that: "The complaint avers that plaintiff . . . seeks to rely upon various statutes of the state of Indiana." (Pet. App.

p. 17.) Therefore, "the present suit frankly characterizes the choses in action involved as existing by virtue of the statutory laws of Indiana . . . The complaint seeks not only wages due for vacation pay, but also statutory penalties and attorneys' fees allowable by an Indiana statute, and thus frankly recognizes the case as a state action. Therefore it is subject to the Indiana statute of limitations." (Pet. App. p. 19.) It was the Circuit Court's opinion that under the issues raised in the record before it, it was not required to reach an issue of federal substantive law as applied to labor relations because: "There is before us actually a case by an agent to enforce the rights of individual workmen to collect from defendant vacation pay, which it is claimed was due them individually under Indiana law and for which it is clear that they individually could have brought their own suits in the state courts of Indiana." There is nothing in the record herein to show that at any time the petitioner took any form of transfer either orally or in writing the alleged vacation pay claims of the employees of respondent mentioned in Exhibit B attached to petitioner's original complaint filed in the District Court. (Pet. App. pp. 18 and 19.)

The petitioner's statement of the case at page 3 and the top of page 4 of its petition herein, with reference to the case of *Johnson* v. *Hoosier Cardinal Corp.* which was filed in the Superior Court of Vanderburgh County, Indiana as a class action for the benefit of the same employees who are the beneficiaries of the action herein and which was for the same vacation pay and statutory penalties sought to be recovered herein, and the reference also raised to this action in footnote 3, page 12, is rather surprising because none of the facts with reference to this prior action in the state court have ever been made a part of the record in this cause, either in the case while it was pending in the District Court or while it was pending in the Circuit Court below,

and was not argued before the District Court or the Circuit Court below. Under the circumstances, such action cannot be considered by this Court nor is it material to this action. (*Hedgebeth* v. *State of North Carolina,* 334 U. S. 806, 68 S. Ct. 1185 (1948).) It is further surprising because inasmuch as the prior action was for the benefit of the same employees and seeking the same recovery that is sought in this subsequent action, the prior action would clearly be *res judicata* as to this action and would be a bar to this action in any event.

ARGUMENT.

It is submitted that it is abundantly clear that the decision below is based on settled principles and is clearly correct. This case does not involve an important federal question and the decision of the Court below does not conflict with this Court's rulings or those of the various Courts of Appeal, or give rise to any constitutional issue.

The petition for certiorari is devoted almost exclusively to the general proposition that this Court should create a uniform period of limitations applicable to all actions under Section 301 of the Labor Management Relations Act, as amended, regardless of the type of relief sought or the theory of recovery, even though Congress, in enacting Section 301, did not deem it necessary to incorporate a statute of limitations for actions brought under that Section of the Act. The petitioner, in effect, is asking this Court to find that there is no period of limitations applicable to actions brought under Section 301, regardless of the theory of recovery, or, on the other hand, suggests that if the Indiana statute of limitations does apply that this Court find that the limitation period is long enough, namely, twenty years, in order to permit the petitioner to bring its action herein. This inconsistency is compounded by the petitioner when its main proposition is that the decision of the Court below, by applying the state statute, would create a lack of national uniformity on when causes of action may be brought under Section 301, and at page 10 petitioner further argues that it is clear that the applicable statute of limitations must also be a matter of uniform law without state by state differentiations. Petitioner then urges that national uniformity is vitally necessary in Section 301 actions, yet

would, in effect, have the Court say that a Section 301 action could be brought at any time without regard to state statutes of limitations or, for that matter, any period of limitations. This position would lead to a maximum lack of uniformity.

If this Court, therefore, were to take petitioner at its word, it would mean that following a principle of national uniformity guided under the general rule of cases such as *Textile Workers* v. *Lincoln Mills*, 353 U.S. 448, 77 S. Ct. 912 (1957), *Local 174, Teamsters* v. *Lucas Flour Co.*, 396 U.S. 95, 82 S. Ct. 571 (1962), petitioner herein cannot on the basis of its own argument, be granted any affirmative relief herein. This is true because if petitioner is to prevail it must show some legal basis for the proposition that a twenty year period of limitations or no period of limitations at all must apply in Section 301 claims even in light of its own argument that national uniformity is necessary in such actions and that this uniformity should be shaped in light of the intent of Congress in enacting the Labor Management Relations Act, as amended, which Act has as its principle speed and dispatch in labor relations.

I.

THERE IS NO CONFLICT WITH THE DECISIONS OF THIS COURT.

It is a well established principle of the federal law that where a federal statute relating to specific subject matter does not contain any period of limitations, the state statute of limitations and the interpretation placed on it by the state courts controls. *Chattanooga Foundry and Pipe Works* v. *City of Atlanta*, 203 U.S. 390, 27 S. Ct. 65 (1906); *Rawlings, Receiver* v. *Ray*, 312 U.S. 96, 61 S. Ct. 473 (1941); *Cope* v. *Anderson, Receiver*, 331 U.S. 461, 67 S. Ct. 1340 (1947); *McAllister* v. *Magnolia Petroleum Co.*, 357 U.S.

221, 78 S. Ct. 1201 (1951); *O'Sullivan* v. *Felix,* 233 U.S. 318, 34 S. Ct. 596 (1913); *Campbell* v. *City of Haverhill,* 155 U.S. 610, 15 S. Ct. 217 (1895); *Holmberg* v. *Armbrecht,* 327 U.S. 392, 66 S. Ct. 582 (1946); *McClaine* v. *Rankin,* 197 U.S. 154, 25 S. Ct. 410 (1904); *Bauserman* v. *Blunt,* 147 U.S. 647 (1892); *Amy* v. *Dubuque,* 98 U.S. 470, 25 L. Ed. 228 (1878). Apparently, petitioner hopes to obtain a very substantial departure from this well established rule. Contrary to petitioner's claim of lack of uniformity, this rule in fact establishes a principle of uniformity in situations involving federal statutes lacking a specific period of limitations, *i.e.,* automatic application of the appropriate state period of limitations.

At page 6 of its petition the petitioner cites three cases for the proposition that this Court has declined to apply an appropriate state period of limitations in cases similar to that now before this Court. It is respondent's position that these cases are not applicable here. Two of these cases, in fact, involved actions wherein a federal statute of limitations was involved, while the third concerned the application of an equity rule formulated by this Court for actions on that side of this Court. Thus, it is that *McAllister* v. *Magnolia Petroleum Co., supra,* involved a claim for relief grounded on a violation of the Jones Act for negligence (46 U.S.C.A. Sec. 688) and under the general maritime law for unseaworthiness. This Court held that "it is unnecessary for us to decide the broad question of whether a state court is free to apply its own statutes of limitation to an admiralty right of action" (357 U.S. at 244, 78 S. Ct. 1203) because "Congress has provided that a seaman shall have three years to bring his action under the Jones Act" (357 U.S. at 225, 78 S. Ct. 1204). Therefore, the issue in *McAllister* was not the absence of any guide as to a period of limitations applicable to a federal claim, but rather whether or not a specific federal period of limitations

should apply to all aspects of the case since there was a direct expression by Congress as to the preferred period of limitations. Finally, in his concurring opinion, Justice Brennan observed: "Where federal statutes, which create federal rights of action, do not include a period of limitations, it has been the practice of state and federal courts to apply state statutes of limitations," 357 U.S. at 328, 78 S. Ct. 1206. Thus, *McAllister* is merely a restatement of the rule that respondent contends applies to the case now before this Court on the petition herein and rather than support for petitioner it is clear authority supporting the finding of the District and Circuit Courts to the effect that the appropriate state statute applies to petitioner's claim.

In a similar manner, the recent case of *Burnett* v. *New York Central R. Co.*, 380 U.S. 424, did not directly concern a question of an applicable period of limitations, since it was assumed in the action brought under the Federal Employers' Liability Act that the three year period of limitations applicable thereunder was controlling in the case. 45 U.S.C.A. Sec. 56. The issue was whether or not dismissal of a case for improper venue tolled the period of limitations applicable to cases brought under the Federal Employers' Liability Act. This case did not raise any issue as to the appropriate period of limitations when an action is brought under a federal statute which contains no period of limitations. It should be noted that in coming to the conclusion that an action dismissed for improper venue tolls the statute where the new action is brought only eight days after the three year period of limitations applicable to such cases, Justice Goldberg made a lengthy analysis of the legislative history of the Federal Employers' Liability Act, 85 S. Ct. 1053-57. Suffice it to say that the most superficial analysis of the structure of the Labor Management Relations Act itself or the legislative history thereof clearly shows a Congressional design of speed and

dispatch much in conflict with the position that petitioner would have to take to prevail herein. See G.P.O., *Legislative History of the Labor-Management Relations Act*, 1 *et seq.* (1950).

The final case cited by petitioner for the proposition that this Court has declined to apply a state statute of limitations concerns the application of an equity rule involving an action in equity brought to enforce the statutory liability of a stockholder in a federal land bank. *Holmberg* v. *Armbrecht, supra.* The opinion in this case is most revealing since Justice Frankfurter in passing, at 327 U.S. at 395, makes the following observation: "If Congress explicitly puts a limit upon the time for enforcing a right it created, there is an end of the matter. . . . The rub comes when Congress is silent. . . . As to action at law, the silence of Congress has been interpreted to mean that it is a federal policy to adopt the local law of limitation." The Justice then goes on to find that since the action is in equity the Court was required to use a period of limitations only as a guideline, not as a rule of law. A similar observation is made in the annotation in 162 ALR at 725:

> "In the absence of a Federal general statute of limitations, or a provision in any particular Federal statute creating the right, limiting the time of enforcement, the Federal courts in enforcing at law rights created by a Federal statute have generally felt bound by and have applied the state statute of limitations."

It is beyond doubt that a claim for wages, penalties and attorney fees under an Indiana statute is one at law, since the remedy sought is the payment of money, not an accounting as was the case in *Holmberg.*

The authorities cited by petitioner for the proposition that the Court improvises as to a period of limitations when a federal statute contains no such period do not support this contention. In fact, the many cases decided by

this Court and cited above by respondent make it apparent that such is not the case. As observed by the Court below: "The complaint seeks not only wages due for vacation pay, but also statutory penalties and attorney's fees allowable by an Indiana statute, and thus frankly recognizes the case as a state action." (Pet. App. p. 19.)

The Court below was clearly correct in applying the local period of limitations to the claim stated by petitioner, not only because it simply applied the general rule to actions wherein the federal statute contains no period of limitations, but in addition petitioner's own theory of recovery was one of local law as shown by paragraph 10 of the complaint filed in the District Court which reads: "10. That pursuant to the Act of the General Assembly of the State of Indiana for the year 1911, Chapter 68, Sections 1 and 4 thereof and in accordance with the Acts of the General Assembly for the year 1933, Chapter 47, Section 2, there is due to the employees represented by the plaintiff an amount equal to double unpaid wages which amount is in excess of Eighty Thousand Dollars ($80,000.00)." Petitioner would use Indiana law only where convenient, rejecting it where it would bar its cause of action, yet in a somewhat unusual *non sequitur* reasserting Indiana law (the twenty year statute of limitations) where the period of limitations is long enough to allow it to bring its action.

II.

THERE IS NO CONFLICT AMONG THE CIRCUITS.

On page 7 of the petition, petitioner asserts that there is an increasing body of dispute in litigation over the application of statutes of limitation in cases arising in Section 301. The petitioner cites *Tully* v. *Fred Olsen Motor Service Company,* 134 N. W. 2d 393, a case arising in a Wisconsin state court, and two other cases, *Falsetti* v.

Local 2026, No. 14263 (District Court opinion at 34 F. R. D. 461) awaiting the decision of the Third Circuit, and *Fischbach and Moore, Inc.* v. *International Union of Operating Engineers,* No. 19476 (District Court opinion at 198 F. Supp. 911), awaiting the decision of the Ninth Circuit.

Obviously, any decision in this case could not be in conflict with a decision in any other Circuit since the above cases have not even been decided and the petitioner cites no other Circuit. It is clear that the decision below is not in conflict among other Circuits.

Incidentally, the cases above cited by petitioner are factually distinguishable from the case here where the lower Court herein specifically found that the contracts in question, so far as a statute of limitations is concerned, were oral contracts.

III.

THERE IS NO IMPORTANT FEDERAL QUESTION INVOLVED IN THIS CASE.

The petitioner at page 8 of the petition herein is concerned that "antiquated state labor law theories" might be infused into federal labor law if the lower court's decision is affirmed, and therefore, urges that because of the necessity for uniformity as to the statutes of limitations, an important federal question, is involved in this case.

Petitioner, however, found nothing "antiquated" about asking in addition to vacation pay for the employees in question, for attorneys' fees and statutory penalties as well as liquidated damages under the Indiana statutes which it uses partially, at least, as the basis for its claim filed against respondent herein. The Court below, in effect, found that it was not required to reach a question of federal labor law simply because of the fact that petitioner based its claim not solely on federal labor law or any theory